the phone calls I get. If I didn't have that, I don't think living or dying would matter to me."

(EDITOR'S NOTE.—Janet Singer Kazor has established a savings account for friends and supporters of her son in his name at the University National Bank, Rockville branch. The fund is to be used for home nursing care and his education.)

MARK SINGER: MY "THANK YOU" LIST

President and Mrs. Gerald Ford.

The Honorable Eugene McCarthy, U.S. Senator (Minnesota).

The Honorable Donald Shaeffer, Mayor of Baltimore.

Dr. Ira A. Morris, the primary doctor, Johns Hopkins Hospital, Baltimore.

The entire staff of doctors, nurses and medical students on assignment at Johns Hopkins.

The Pinkerton security guards, on duty at Johns Hopkins and in particular Mrs. Billie Morgan.

Dr. Bernard Heckman, Silver Spring, Md.

Dr. William Marcus, Silver Spring, Md.

Rabbi Herzel Kranz, Silver Spring Jewish Center Congregation.

The many priests and staff at Holy Cross Hospital, Silver Spring, Md.

The State Medical Assistance Program, especially Mrs. Elizabeth Bell, social worker.

The Jewish Social Services (Mrs. Roberta Green, social worker).

The "100" Club of Silver Spring, Md.

Radio Station WCBM, Baltimore and its staff.

The Rev. Billy Graham.

The family church group and personal friends of Mrs. Billie Morgan.

Kr. George Laney, a real friend in need.

The American Red Cross (Blood replacement sponsored by Mr. George Hannaway).

The National Foundation for Ileitis and Colitis (for blood replacement).

The Horace Saunders Ostomy Association.

Mr. Donald E. Wolpe, formerly with University National Bank, for giving me a job knowing of my illness.

Don Baylor, representing the Baltimore Orioles baseball team.

The Washington Redskins.

The Washington Bullets basketball team.

Jefferson Lodge No. 13, Independent Order of Odd Fellows, Pikesville, Md.

The Independent Order of Odd Fellows, Jurisdiction of the District of Columbia, especially Mr. Raymond G. Fridley, Grand Master.

My mother's personal friends, too many to name, but not to be forgotten.

And last of all, God bless her, my mother.

DOUGHNUTS TO DOLLARS FOR MARK SINGER

(By Peggy Eastman)

Debbye Warsaw 16, had not seen much of Mark Singer, 18, since both were classmates at Montgomery Hills Junior High School in Silver Spring.

Like many of his friends, she knew of Mark's illness (he is a victim of severe ileitis, inflammation of the small intestine, and related medical complications), but it had come between them. She said, "We had kind of lost touch . . . I didn't know if he wanted to see me." It was not until she read *The Journal* article (TEMPO) section, June 5, 1975) detailing Mark's medical problems (including osteomyelitis, a coma, a colostomy, and a tracheotomy) and his hospitalization, that Debbye decided it was decidedly the time to put aside all hesitation and do something concrete for her junior high friend.

Learning that Mark's mother, Janet Singer Kazor of Takoma Park, was on welfare, and that money would be needed for Mark's medical care at home ofter his discharge from Johns Hopkins Hospital in Baltimore (June 30), Debbye set out to raise money for her friend's future. From the *Journal* article, she learned that a Mark Singer Trust Fund had been established at the University National Bank, Rockville branch.

A pompon squad member at John F. Kennedy High School in Silver Spring, where she will be a senior, Debbye started by holding up a bucket at a Kennedy picnic in June and appealing to her classmates to fill it for Mark. "I was kind of nervous," she said. "I wanted a teacher to talk into the microphone, but he said it would be better coming from me."

She was overwhelmed at the response. "They kept coming up and putting money in—it was like a telethon. I was so happy I was crying." In 1½ hours, Debbye collected $54 for Mark. He didn't know anything about the Kennedy picnic until Debbye appeared at his bedside at Hopkins with a cashier's check for $54.

In subsequent weeks, as school drew to a close, Debbye collected $30 more for Mark Singer. She wanted to go to Bethesda-Chevy Chase High School, which Mark attended, but by that time it was the last week of school, and the student body was scattering. When Kennedy's principal, Bruce O. Sivertsen, told Debbye about the public school supporting services staffer who would be coming to Kennedy to register for special unemployment insurance assistance (see *The Journal*, July 3, p. A–2). Debbye and Kennedy business manager Ralph Allen hit on a novel idea—donuts.

Specifically, what they decided to do was sell donuts and coffee to the teacher aides, cafeteria workers, bus drivers, etc., who came to register. Allen made a trip to Dunkin Donuts in Wheaton, where manager Paul Hettick said he'd be glad to give the Mark Singer fund a discount price of 60 cents a dozen. A local Grand Union also agreed to a discount price.

In two days last week, Debbye and Kennedy students Rod Thompson and Jean Main sold 70 dozen donuts at 15 cents each (coffee and a donut for 25 cents), netting more than $100. On one day they sold 200 donuts, ran out, and were given, gratis, 20 dozen donuts from the Montgomery Doughnut Co., Inc. Dunkin Donuts then donated a batch, as did Posins' Bakery Delicatessen on Georgia Avenue. Debbye Warsaw and the Kennedy students collected more than $400 for Mark through donut sales and contributions by check.

Mark Singer came to Kennedy High School last week, accompanied by his mother, Janet Singer Kazor, Paul Rutherford, a friend from Baltimore who pushed his wheelchair, his aunt, Edith Dorfman of Silver Spring, and a family friend, Moshe Brodetzky, also of Silver Spring.

Now, he is no longer the lonely, emaciated boy who said of his former friends, "They came when it was convenient for them to come, and when it was no longer convenient, they didn't come." Mark is something of a local celebrity now; his homecoming was filmed on WTOP–TV (Debbye called the TV channel's office). His face has filled out; from a low of 56 pounds, he has climber up to 77.

Mark has received several hundred letters from people who have read about him in *The Journal*, read a *Journal* adaptation in *The Jewish Week*, seen him on television, or responded to Johnny Holliday's mention on WWDC-radio. The letters range from several written by seriously ill people who urged Mark to "hold on," in the words of one; to a note from a woman who described herself as "an old lady with 4 grandchildren and 2 great grandchildren," whose husband was related to Abraham Lincoln; to a teenaged girl who said she was sorry to hear that Mark's friends had not been visiting him and she hoped "I can be your friend if it is at all possible."

In the *Journal* article, Mark Singer described how his friends from high school days at B–CC had stopped coming to see him. Anita J. Willens, principal of Charles W. Woodward High School in Rockville, sent a letter to Mark in reply to his remarks.

"While it must be difficult for you to bear your isolation, perhaps it might help to know that there are times your friends are thinking of you but feel uncomfortable to visit," Ms. Willens wrote. "Maybe if you let it be known that you would welcome their visits and would enjoy sharing their fun vicariously, they might be more at case and would want to visit."

After reading Ms. Willens' letter, Mark Singer told *The Journal* he agreed with her, and felt he had been too harsh on his friends, whom he termed in the *Journal* article "my acquaintances—*supposed* to be my 'friends.'"

Meanwhile, Debbye isn't stopping with donuts. She is organizing a benefit marathon at thhe Glenmont Cue Club (admission probably $1) with trick billiard shooter Chet Morris. She is also beginning work on a benefit dance to be held at Kennedy High School in October, and is appealing to all county high school students to come.

MARK SINGER TRUST FUND

The Mark Singer Trust Fund is especially important to 18-year-old Mark, right now. His mother has been told by the Washington Adventist Hospital physical therapist working with him that there are too many steps in Janet Singer Kazor's Takoma Park apartment for Mark to negotiate in a wheelchair, or eventually, a walker. The family must move. Also, a lightweight wheelchair is needed for Mark.

The Mark Singer Trust Fund has been established at the University National Bank, Rockville branch.

S. 1

A NATIONAL SECRETS ACT

Mr. MUSKIE. Mr. President, more than 2 years in the wake of Justice Department efforts to prosecute Daniel Ellsberg for the disclosure of the Pentagon papers history of our involvement in Vietnam, the administration put forward a bill (S. 1400) which would have recodified the Federal Criminal Code.

Hidden deep in that lengthy and complex legislative proposal were five sections which, taken together, would have established in peacetime a system of governmental censorship that a democracy could hardly tolerate in a time of war.

That proposal went far beyond any laws which we have ever had even during the emergencies of World War I and World War II. In that the proposal would have given the Government the power to prosecute newsmen not only for revealing what they determine the public should know, but just for possessing information the Government says they should not have, it constituted no less than a "National Secrets Act.'"

S. 1400 died without action in the 93d Congress. It has, however, found a successor in S. 1 which is presently before the Senate Judiciary Committee.

While there have been improvements in S. 1 from the version which was offered in the last Congress many of its sections—particularly those dealing with the revision of the espionage laws—raise serious questions affecting the first amendment rights of the press in a democracy and the need for that fourth estate of Government to keep a watchful eye on the operations of the other three.

Under the new proposal, a reporter who catches the Government in a lie, who un-

one solution, but the disease may recur in the intestine above the area operated on, occasionally soon after an operation. Perhaps cruelly, as the body progressively deteriorates, the mind of an ileitis patient remains clear.

Dr. Morris noted that although ileitis and its disease twin, ulcerative colits (inflammation of the large intestine) are mystery ailments, one known factor is that they seem to affect Jewish people more often than non-Jewish. There also is a question of just how much they are induced by emotional problems, although Morris said that may be a chicken/egg situation: which came first, the disease or the emotional reaction?

Mark Singer's case is unusual not in that he has Crohn's disease (estimates are that one out of 3000 U.S. adults has some form of Crohn's disease), but in that when he was brought to Hopkins he had deteriorated physically to a point rarely seen by doctors in ileitis patients.

Many such patients have colostomies (an operation in which the body's wastes are passed via the cut colon [large intestine] through a hole in the stomach wall into a removable pouch) as did Mark, and lead normal lives. In this area, the Metro Maryland Ostomy Association, serving Montgomery and Prince George's counties, has some 200 members.

But Mark Singer's problems go beyond the limits of ileitis itself. An abcess eating away at his right hip, caused by a fistula tract related to ileitis, led to the onset of osteomyelitis and the destruction of that hip. He has spent months in traction to keep his femur bone in place.

Several critical respiratory arrests nearly ended the suffering of Mark Singer. A tracheotomy prolonged his grasp on life. (The small hole in his neck is healing over now.) Bed sores, some larger than a grapefruit, have plagued him since he was confined to a hospital bed. In addition to the surgeries performed for treatment of ileitis, osteomyelitis and complications, Mark underwent an operation for stress ulcers, probably contracted, his doctors believe, from mental and emotional strain.

A visit to Mark Singer leaves an unquiet mind. At 65 pounds, his extreme frailty is what first overwhelms a visitor. "But you should have seen him four months ago," says Rabbi Kranz, who has become a constant watcher at Mark's bedside (though Mark and his mother were not members of his temple). "When I first saw him, he looked like an old man, skin and bones, a survivor from Dachau or Auschwitz."

Mark, his mother tells me, used to have dimples, a slightly cleft chin. It is difficult to accept until, later, she takes the smiling family picture out of her wallet.

Mark is on a stretcher, waiting to be wheeled to a Hubbard Bath's hydrotherapy tank. It is the first time he has been out of bed since he came to Hopkins except for the operating table. Quietly, his voice wavery but distinct, he talks of first knowing something was very wrong with his body—when he was a junior at Bethesda-Chey Chase High School. (Mrs. Kazor, twice divorced, then lived with Mark and his brother Andrew, now 21, at Blair East apartments in Silver Spring.)

"I was having real bad cramps in my stomach . . . one day I was so cramped up I couldn't get out of bed," Mark remembers. "That's how bad it got. The cramps lasted anywhere from 10 minutes to all night."

The condition was first mis-diagnosed as ulcers (which is common in ileitis cases, said Dr. Morris). But hospital tests prompted by the severity of the attacks revealed that Mark was suffering from Crohn's disease. "I knew nothing about Crohn's disease, so when the doctor told me I went into a panic. He started to explain that it had something to do with the intestines, and I started to get sick. He started to tell me to stay away from this food and that food and he gave me pain medication."

Janet Kazor (belatedly, she admits now) sought the help of a specialist for her son—Dr. Bernard A. Heckman of Silver Spring, who is on the board of medical advisors of the Metro Maryland Ostomy Association. Heckman told Mark "that it was going to be a long process, that they were going to try medication first, that I would have to go through a whole battalion of tests, and that it wasn't going to be easy . . . at that I just ran out of his office crying . . . it was too much for me. I just ran. I ran into a shopping center and I just sat there and cried."

A desire to know "what it was like to be well again" pulled him out of this first of many vortices. Mark Singer missed the whole second quarter of his 11th year of school (1972). On a restricted diet, steroids and pain medication, he began to have side effects from the steroids.

At an age when pimples are the most disfiguring health problem for many teenagers, Mark developed a rash, gained weight. "It got to be rough, because I couldn't get to see my friends a lot of the time."

At a time when many teenagers get their learner's permit to drive a car, Mark Singer rarely left his house. "The only time I even got outside was through a window or on a balcony because I couldn't go very far . . . I was afraid I'd get cramps somewhere away from the house . . . and God knows how long I'd be stuck there." There was no high school prom for Mark Singer. He graduated from B-CC at 16 between two major surgeries by taking the high school equivalency examination.

People from all faiths have prayed for Mark in and out of his hospital room. In the drawer of a chest beside his bed are a crucifix and a mezzuzeh. An inspirational book, *The Treasure Chest* by Charles L. Wallis (Harper & Row, 1965), presented by the Billy Graham Evangelistic Association, sits on the ledge underneath his window.

"I don't think you have to be of any one religion to pray to God," says Mark. "I do believe in God very strongly . . . I haven't had any religious training of any kind except what I've read up on and from talking to the people who come into my room . . . My answer to religion has always been 'no' but my answer to God was always 'yes.'"

Television, with its advertising hard sell and situation comedies, is Mark Singer's contact with what is happening outside his four hospital walls. Does the contrast between televised trivia and his daily battle with pain overwhelm him at times? "In a way, but I also look at it like this. Lately I've been watching a lot of news. They talk about the unemployment rate and how high it is in Baltimore . . . and I may be sick . . . you know, day to day physical problems, pains and stuff, but they're out there, they're trying to live . . .

"I mean I get my meals, and if I need something for the pain I get it . . . somebody will be there if I need something. And these people, they've got to really struggle . . . even to get a job, just to support themselves so they can eat.

"A lot of the TV shows are trivial in a way, but they're also good because if I were to not watch any of them, just keep my mind on myself constantly, I really think I'd go crazy."

Spending an afternoon with Mark Singer is to see how, specifically, he diverts his mind from himself. Al Stoller, who is from the Independent Order of Oddfellows, Baltimore chapter, and his wife have come to visit. Mark notices Mrs. Stoller standing off to one side. "How are you doing, Mrs. Stoller?" he says, raising his arm, clasping her hand in his.

Later he asks a nurse, "Hey, where's your bracelet?" referring to the macrame wristlet he made her, just like the one he wears on his own frail wrist. Once says Janet Kazor, Mark made her take his sleeping pill when she stayed overnight in his room (as she often does). She slept and he didn't.

It is hard to be an 18-year-old boy without a peer group. One of the saddest things for Mark Singer to deal with was the fact that as his condition worsened, his circle of friends from high school days constricted. Now, almost no one comes anymore from that former B-CC group.

"I haven't seen any of my friends for three months," says Mark, with a shadow of that tough guy defiance that brings him off the operating table. "I don't miss my acquaintances—*supposed* to be my friends."

Hardest to accept is the absence of a friend who took a four-day 2600-mile eastern seaboard trip with him, after the onset of his illness. 'He hasn't come to see me once since I've been here."

And then, "When I get out of here I'll make new friends. The hell with them . . . I've learned a lot since I've been here. I've learned that at 18 you can be independent, and I've learned that I have a lot of inner strength."

His older brother, Andrew, 21, also doesn't come. "He couldn't take it," says Janet Kazor. "He ran away from it." Mark once told his mother, Janet Kazor says, "I love my brother because he is my brother, but I don't like him as a person." Mark's father, now in California, also doesn't come, in spite of letters from his former wife and one from Rabbi Kranz that, in the Rabbi's words, "would make him not sleep nights."

In fact, Janet Kazor was virtually alone with her son's overwhelming physical and mental needs until the intervention of those on what Mark calls "My 'Thank You' List." Besides individuals like his doctors and Rabbi Kranz, the list includes the Maryland Medical Assistance Program, which pays Mark's hospital bills.

The bills have been staggering. Recently, Janet Kazor opened an envelope to find a bill of $38,589.63, for a five-month period at Hopkins. The bill includes surgeries, the room, and nursing care, but no doctor's consultation fees.

A former hairdreser who gets no support from either of her former husbands, Janet Kazor is now trying to live on $150 a month public assistanee ("on the state" as she puts it). She commutes at least four times a week from Takoma Park to Baltimore to see her son (doctors urged her not to move there, to give herself a respite), often sleeping overnight in a chair in his room. Because of this vigil, she has not been able to work. People on Mark's "thank you" list have helped out with gasoline money.

Mark's future—when he will come home, what his path will be—is both a source of hope and concern to Mrs. Kazor. Dr. Morris told *The Journal* that his immediate goal is to get Mark walking, and that a replacement hip may be a possibility for his right leg.

There will be nursing bills, home care needs to be met, dietary consultations, trips to the hospital for treatment, special orthopedic supplies like the shoe for the foot on his left leg Mark was measured for recently.

But for now, it is enough for Janet Kazor that her son is on the upswing. His recovery in recent weeks has been so dramatic that he sat up in a wheelchair, stood up, and was allowed home (last weekend) on a special 24-hour leave. Two months ago, all of this would have been the farthest notions from his doctors' minds. Mark is asking about college courses (mathematics or aviation science), he has always wanted to fly a plane, and designs models. Bright and alert, his mind wants something to work on besides pain.

And he wants the knowledge that his thank you list is real, that he is not already a lost cipher in time. "I'll tell you what keeps me going . . . it's the cards and letters on the wall, people who come into the room and

covers fraud, who unearths examples of monumental waste, could go to jail.

Such a law would force journalists to rely upon self-serving press releases manufactured by timid bureaucrats—or risk going to jail for uncovering the truth.

A former member of my staff, Mr. Dan Lewis, who is now practicing law in Washington, and who is very familiar with the proposed revisions in the Federal Criminal Code has prepared a memorandum which discusses each of the problems posed by the administration proposal. It is worth noting some of the observations he makes in his study.

For example, section 1123 of S. 1 would forbid communications which are defined to include any act of making information "available by any means to a person or to the general public." Therefore, giving this information to a newsman and its publication by the press or electronic media would constitute a felony.

The newspaperman, the editor, the press man, even the newspaper delivery boy would commit a crime under this section. In fact, anyone who aided in making the communication would be considered an accomplice.

Newspaper publishers and television station owners would be no less covered by the act for the crimes of their agents. Under such a proposal if information were properly obtained from a foreign government or from a foreign press source or even from direct observation, it would fall within the proscriptions of this section.

For example, if a journalist printed information about the secret U.S. bombing in Cambodia during the Vietnam war, and that information had not been officially released, such a press report would be a crime, even if the journalist obtained the information by his own direct observation or through a foreign press report.

Even more important certain sections of this bill would make the act of communicating certain information a crime even if such communication was made with no intent to harm the United States or to aid its enemies. The act requires no mens rea or the intent to do wrong which is fundamental to our criminal law.

While the objectives of S. 1 were to simply recodify the existing Federal criminal law, we find the scope of the proposed National Secrets Act to bear little resemblance to existing espionage laws which generally limit criminal prosecution to espionage as it is traditionally understood. The present espionage laws have been limited by the Congress and the courts to cover specifically enumerated types of vital secret information; to require that persons charged have intended to injure the United States, or have an intent to do wrong; and that they be applied to the transmission of information which would in fact cause an "injury" to the United States or be used to the advantage of a foreign nation.

The limitations in the present law were reaffirmed by former Attorney General Elliot Richardson when he testified before my Subcommittee on Intergovernmental Relations on the predecessor to S. 1, S. 1400. Those hearings were held jointly with the Judiciary Subcommittees on Administrative Practice and Procedure and Separation of Powers. At that time the Attorney General disavowed support of any espionage laws insofar as they imposed criminal penalties upon journalists without a finding of intent to harm the United States, and insofar as they did not limit the information covered to specifically enumerated categories of Defense information or information which a person would believe should not be released because it could injure the United States.

It is encouraging to see that the present Attorney General Edward Levi also has expressed some concern for the breadth of the proposal before the Judiciary Committee.

For several weeks now, members of my staff and those of the staffs of Senators HART, BAYH, and CRANSTON have been working with representatives of newspaper, broadcast and other interested organizations to fashion a workable alternative to the administration's proposal. Their efforts have also been met with interest by representatives of the Department of Justice.

We are hopeful that those efforts will produce an amendment to S. 1 which can provide the protection of legitimate secrets in the interests of our national defense and foreign policy without stifling or threatening with prosecution a probing and aggressive media which is so essential to our open form of democracy.

Mr. President, I ask unanimous consent that a memorandum, entitled "The National Secrecy Act Provisions of S. 1, the Proposed Revision of the Federal Criminal Code, be printed in the RECORD.

There being on objection, the memorandum was ordered to be printed in the RECORD, as follows:

THE NATIONAL SECRECY ACT PROVISIONS OF S. 1, THE PROPOSED REVISION OF THE FEDERAL CRIMINAL CODE

The proposed recodification and revision of the federal criminal code, introduced in the Senate as S. 1 (49th Cong., 1st Sess.), contains several new or expanded criminal offenses which, when taken together, would create a broad and effective National Secrecy Act. These totally new and unprecedented federal crimes would give the Executive Branch the authority to control inside and outside the government the dissemination of almost all information concerning national defense and national security matters. It would do so by making it a crime for anyone to communicate defense related information which has not been officially released by the government to unauthorized persons outside of the government such as newsmen, publishers, broadcasters, and the public.

The National Secrecy Act would give the Executive Branch the discretion to prosecute, and, if successful, jail those who release, discuss, or even just retain defense related information critical of the government even if such information would do no more than expose government corruption, waste, unlawful acts, or mismanagement, and even if the person communicating such information did so as part of their traditional exercise of free speech and with the intent to strengthen the nation by exposing such wrongs.

By making much of present investigative reporting of national defense issues criminal acts, these National Secrecy Act provisions would provide the Executive Branch the opportunity to jail journalists who did not reveal the sources of unauthorized defense information and to place blanket, secret wiretaps on journalists suspected of receiving such information.

In spite of some claims by their proponents, these criminal provisions are not merely the recodification of existing law or its interpretation by the courts. Rather, they are a dramatic and unprecedented expansion of the criminal powers of the federal government to provide pervasive press censorship whose only equal in American history are the short-lived and discredited Alien and Sedition Acts.

I. THE EXPANSION OF THE ESPIONAGE LAWS TO COVER UNAUTHORIZED REPORTING OF NATIONAL DEFENSE MATTERS

1. Proposed section 1123

The most sweeping proposed expansion of the coverage of the espionage laws and of the control of free speech is contained in proposed section 1123 of S. 1, which is misleadingly labelled "Mishandling Defense Information". This section makes it a felony, punishable by imprisonment of up to seven years, for any person, *inter alia*, to communicate to an "unauthorized" person any "national defense information" which has not been officially released.[1] § 1123(a)(1)(A) and (2)(A).
(A).

A felony is committed under this section whenever any of this national defense information which has not "been made available to the public pursuant to authority of Congress or by the lawful act of a public servant", § 1128(f), is communicated to an unauthorized person, which is defined as anyone who, under statute, executive order or regulation, does not have specific authority to have such information, § 1128(a). Whenever defense information, other than information which leaves the government with official blessing, is communicated to or among those outside of the government, it is a crime.

The scope of this new felony is sweeping. "National defense information" is broadly defined to include non-public information that "relates to", *inter alia*, the United States' "military capability", "military planning or operations", "military weaponry, weapons development, or weapons research", "intelligence operations, activities, plans, estimates, analyses, sources or methods", and "in time of war, any other matter involving the security of the United States that might be useful to the enemy". § 1128(f)(1), (2), (5), (6), and (10). None of this information must be classified in order to be covered by section 1123.

During peacetime this definition would include information related to practically all of the activity within the Defense Department, the Central Intelligence Agency, and other intelligence agencies. During war, practically anything involving military, economic, or diplomatic affairs would be included since the word "security" has been chosen for section 1128(f)(10); this term is far broader than "national defense" which, when used in the espionage laws, has been broadly construed by the courts. *Gorin* v. *U.S.*, 312 U.S. 19, 23–25 (1940).

Section 1123 forbids "communication"; this is defined to include the act of making information "available by any means, to a

[1] The actual, awkward language reads: "A person is guilty of an offense [a felony] if being in authorized [or unauthorized] possession or control of national defense information, he engages in conduct that causes . . . its communication to a person who is not authorized to receive it." § 1123(a)(1)(A) and (B).

person or to the general public;" § 111. Thus, giving this information to a newsman *and* its publication by the press or electronic media would be a felony. The newspaperman, the editor, the pressman, even the newspaper delivery boy would commit a crime. Anyone who aided in this communication would be an accomplice, § 401; and newspaper publishers and television station owners would be liable for the crimes of their agents, § 402.

But publication is not required for this offense: even secret briefings of reporters or others would be a criminal act. And conversations between citizens containing such information would also become criminal.

The scope of this felony is so broad, it encompasses the communication of national defense information to unauthorized persons even if such information does not appear to or actually did not originate from a government source. If a government employee improperly discloses information which is subsequently published, all others who republish or communicate this information commit felonies, even if such persons have no belief or reason to believe that such information was improperly disclosed.

In addition, such information, even if properly obtained from foreign governments, from the foreign press or from direct observation, would still fall within the scope of this provision.[2] For example, if information about secret U.S. bombings in Cambodia during the Vietnam war was not officially released, any reporting from journalists about such bombing, either through direct observation or foreign press reports, would be a crime.

This felony thus covers not only harmful "leaks" and justifiable "leaks", but also any discussion of nonofficial defense information.

Both those persons inside the government who have proper access to national defense information and those outside the government are fully liable to these penalties, § 1123(a) (1) and (2).

Most importantly, the act of communication is a crime under Section 1123 even if such communication is made with no intent to harm the United States or to aid its enemies. This crime requires none of the traditional *mens rea* or the intent to do wrong of the criminal law. In fact, a felony appears to be committed even if a person "communicates" this information by mistake or accident.[3] And there is no requirement in this section that the information be the type which, if communicated to our adversaries, would actually or even possibly cause injury to the U.S

In addition to penalizing communication, this section makes it a crime for any unauthorized recipient of this information to fail to deliver it promptly to the appropriate government official. § 1123(a) (2) (B). As discussed below, if a holder of the information returns the information, but refuses to divulge its source, that person could be jailed for contempt. Thus, a recipient of this type of information becomes a criminal if he or she either communicates it to anyone unauthorized to receive it, or just keeps the information and fails to report its divulgence.

Under this section, only those individuals who the government "authorizes" can communicate information concerning almost all aspects of our national defense; others do so as criminals subject to incarceration unless they restrict themselves to communicating that defense related information which the government has officially released. This expansion of the espionage laws transforms them from discrete crimes which penalize those individuals who injure the nation by giving military secrets to our enemies into a system of control, enforced by criminal sanctions, over the discussion and debate of all defense related information.

2. Proposed section 1121

Other sections of S. 1 substantially expand the existing espionage laws far beyond the prohibition of activities undertaken to harm the U.S. or to aid its enemies. For example, Section 1121, the central espionage section, would make it a felony to collect or obtain any "national defense information", knowing that it "may" be communicated to a foreign power. § 1121(a)(2). This would cover a reporter whose investigation of defense or intelligence affairs "may" some day be published or broadcast and "may" be heard or read by foreign intelligence analysts.

As in Section 1123, no intent to harm the U.S. or aid its enemies is required for conviction. Nor is Section 1121's coverage limited to top secret military information or information whose release would injure the U.S.; instead, it covers the broad scope of "national defense information" not released by the government as discussed above.

The only limitation contained in Section 1121 on this new crime of investigative reporting about our national defense is that, in order to be liable, a journalist must know that the information he collects or obtains "*may* be used to the *prejudice* of the safety or *interest* of the United States, or to the advantage of a foreign power". § 1121(a) (emphasis added). What does this standard mean? Certainly, it is not a requirement that the collector of information intend to injure the U.S., or that, as under present law, the collector believe "the information *is to* be used to *injure* the United States", 18 U.S.C. § 793(a) (emphasis added).

This new felony provision merely requires that the journalist understand that it is possible at some time in the future that the information may "prejudice" an "interest" of the U.S. The words "prejudice" and "interest" are not defined, but they would appear to encompass anything embarrassing or critical of the U.S. defense effort, including instances of corruption, policy failure, perjury by high government officials, illegal acts, and waste. No matter what the long-term effects, any *possible* immediate diplomatic, economic, or political setback appears to fall within this standard.

3. Proposed section 1122

Section 1122 of S. 1 also uses this weak, undefined standard of prejudicing an interest of the U.S. to delineate the scope of unofficial national defense information which cannot be communicated to unauthorized persons. This section, as does Section 1123, penalizes both government employees and private citizens for communicating or publishing such information regardless of the legitimacy of its source and the intent of the communicator.

Section 1122's limitation on the type of defense information covered to that which "may" prejudice an interest of the United States is totally superfluous, since all communication of *any* such information to unauthorized persons is forbidden under Section 1123.

The scope of these three provisions would permit the Executive Branch to control practically all discussion and debate over U.S. military and intelligence activities. Only communication of official information—press releases, statements and speeches of officials, agency briefings, and other information officially made public would be legal. All other defense information, no matter what its source, would be illegal to communicate or to possess without return to the government.

4. The scope of existing law

The scope of this proposed National Secrecy Act, of course, bears little resemblance to the existing espionage law covering these acts, 18 U.S.C. § 793(a)–(e), which generally limit criminal prosecution to espionage as it is traditionally understood.

First, these existing laws are limited in scope to cover specifically enumerated types of vital, secret information such as weapons plans, defense strategy, codes, maps, and other precisely defined information the divulgence of which would cause severe injury to the U.S. military posture. In addition, some of these sections use a residual phrase to cover other defense related information, but limit the scope of such information to that "which the possessor has reason to believe could be used to the injury of the United States or advantage of any foreign nation". 18 U.S.C. § 783(d) and (e). Thus, the present espionage laws are limited to the transmission of information which would seriously injure the defense of the U.S. if such information were made available to our enemies.

Second, conviction under the espionage laws requires that the person charged intend to injure the United States; the accused must have acted with the traditional criminal *scienter* or intent to do wrong. Edgar & Schmidt, *The Espionage Statutes and Publication of Defense Information*, 73 Col. L. Rev. 929, 986–98 and 1038–47. No one has ever been convicted of espionage without such a finding. *Id.* Indeed, the Supreme Court has clearly held that a finding of such an intent was a constitutional requirement for conviction under these provisions in light of the broad scope of the information covered by them. *Gorin* v. *U.S.*, 312 U.S. 19, 27–28 (1940).

Third, the courts have indicated that Congress, in order to avoid press censorship and an infringement over public debate of defense issues, limited those parts of these espionage provisions which reach acts by non-government employees so that they exclude coverage of "publication" of information; these sections are instead found by the courts to be directed only to the clandestine transmission of defense secrets to foreign powers:

"It will be noted that the word 'publication' does not appear in this section [18 U.S.C. § 793(e)]. The Government contends that the word 'communicate' covers the publication by a newspaper of the material interdicted by the subsection. A careful reading of the section would indicate that this is truly an espionage section where what is prohibited is the secret or clandestine communication to a person not entitled to receive it where the possessor has reason to believe that it may be used to the injury of the United States or the advantage of any foreign nation."

U.S. v. *New York Times Co.*, 328 F. Supp. 324, 328–29 (S.D.N.Y., 1971), *reversed on other gds*, 444 F.2d 544 (2d Cir., 1971), *affirmed*, 403 U.S. 713, 721 (1971) (Justice Douglas concurring).[4] *See also*, Edgar & Schmidt, *supra*, at 1032–38.

Fourth, these provisions are limited in scope to the transmission of information which would cause an "injury" to the U.S. or would be used to the "advantage" of a foreign nation, 18 U.S.C. § 793.

These limitations on the espionage laws are the result of prolonged and detailed consideration by Congress during World War I, World War II, and the Cold War of the balance which must be maintained between the necessity of keeping certain military information secret and the requirements of free speech and a free press. Congress tailored the scope of the espionage offenses to fit the crime of espionage and no more. And, as our history has demonstrated, these provisions have served our defense needs adequately, while permitting the necessary and benefi-

[2] The definition of "national defense information" excludes only information made public pursuant to a "lawful act of a public servant", § 1123(f).

[3] The crime also encompasses accidental or mistaken loss, destruction, or theft of such information. § 1123(a) (1) (A) and (2) (A).

[4] *But see: Id.*, 403 U.S. at 739, fn. 9 (Justice White concurring).

cial vigorous and free debate over defense matters.

These precise limitations on the scope of the existing espionage laws were specifically reaffirmed by Attorney General Elliot Richardson when, on behalf of the Administration, he testified before the Senate on their proposed expansion. In testimony during the 93rd Congress on S. 1400, the Nixon Administration's proposed federal criminal code revision, the Attorney General repudiated the sweep of Sections 1121–26 of that bill which are very similar to the proposed espionage sections of S. 1.

The Attorney General disavowed support of any espionage laws insofar as they imposed criminal penalties upon journalists without a finding of intent to harm the U.S., and insofar as they did not limit the information covered to specifically enumerated categories of defense information or to information which a person would believe should not be released because it could injure the U.S. Hearings on S. 1142, S. 858, S. Con. Res. 30, S.J. Res. 72, S. 1106, S. 1520, S. 1923, and S. 2073 before the Subcommittees on Administrative Practice and Procedure and Separation of Powers of the Senate Committee on Judiciary and the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, 93rd Cong., 1st Sess., Vol. 2, at 262–63.

In addition to these espionage provisions, 18 U.S.C. § 793, which fully protect our military secrets, the federal criminal code contains other, broad provisions to prevent any transfer of vital defense information to our enemies:

18 U.S.C. § 952, forbidding government employees to publish or to transmit to unauthorized persons any diplomatic or military code or any diplomatic or military material that has been encoded.

18 U.S.C. § 954, forbidding any person from knowingly making untrue statements under oath which that person has reason to believe will influence a foreign government and thereby injure the United States.

18 U.S.C. § 794, forbidding any person to gather or deliver defense information to any foreign government with the intent or reason to believe that is to be used to the injury of the United States or the advantage of a foreign government.

II. THE CREATION OF A CRIME FOR THE UNAUTHORIZED RELEASE OF ANY CLASSIFIED INFORMATION

Section 1124 of S. 1 also creates a felony for the act of communicating any classified information to an unauthorized person. § 1124(a). Thus, any release or discussion by government officials of any classified material with unauthorized persons becomes a crime. Those who leave government, in protest or otherwise, can also never divulge this information. § 1124(a).

A felony is committed if the government merely asserts that the information was properly classified; there is no judicial review of this assertion. § 1124(c)(2). The actual fact that the information was improperly classified is specifically eliminated as a defense to prosecution under this section. § 1124(e).

Under Section 1124, no intent to injure the U.S. or aid its enemies is required; communication alone is sufficient.

Any information which is classified, properly or improperly, is covered. § 1128(b). The material is not required actually to deal with defense secrets or national security matters; it need only have been classified for "reasons of national security". *Id.*

The thousands of bureaucrats who can classify information would have the power to define the scope of this crime simply by stamping material classified. Regardless of the propriety of their actions, they can place government information beyond the reach of the public and the press and make it a crime to release such information. The massive overclassification of information would be reinforced with the harsh force of criminal law. By preventing release of such information by those who have left government, the classification system can be used to permanently cover-up fraud, waste, mismanagement, illegal acts, and official perjury.

This felony does not cover communication of classified information by those who are unauthorized to possess it, § 1124(a), and it excludes recipients of the information from prosecution as accomplices or co-conspirators, § 1124(b). This apparent exemption for journalists and others, however, has little meaning.

First, if the classified information relates in any way to defense matters, as most of it will, the recipient will commit a crime under the expanded espionage laws if he either keeps the information or communicates it, §§ 1121, 1122, and 1123.

Second, a recipient can be sent to jail for refusing to disclose the source of the information. If, for example, a reporter publishes a story using classified information, he either could be sent to jail or forced to reveal the source; the latter act would end any future sources and send the past source to jail.

Thus, under Section 1124, a reporter may be able to avoid a conviction; but he cannot avoid either jail himself or prosecution of his source.

Section 1124 also provides an affirmative defense to government employees prosecuted under this section if (1) the divulged information was not lawfully subject to classification, *and* (2) the employee attempted to have it declassified through existing administrative procedures. § 1124(d)(2). This exemption is almost totally meaningless, since every government employee fully realizes that attempts to declassify material which may involve the bureaucratic cover-up of corruption, waste, incompetence or illegal acts will only terminate any career advancement and spotlight the source of any subsequent unauthorized disclosure.

As in the case of the proposed espionage laws, Section 1124 represents an unprecedented and dramatic expansion of existing law. Under present law, prosecution for disclosing classified information is carefully and properly limited in one of two ways: it is either confined to specifically enumerated categories of information related to important military and intelligence secrets, 18 U.S.C. § 798, or it is confined to the giving of any classified information to a foreign government or a communist organization, 50 U.S.C. § 783(b).

III. THE EXPANSION OF THE FEDERAL CRIME OF THEFT TO INCLUDE THE TAKING OF IDEAS AND INFORMATION

S. 1 contains several provisions which could make the obtaining by reporters of information from the federal government a crime by including such acts within the definition of the theft of property.

For example, if a person obtains or uses government property with intent "to appropriate the property to his own use," he commits theft, § 1731(a)(2) and (c)(2). Property includes government records or documents, § 1731(b)(2)(B)(iii), "intangible property" and "anything of value resulting from a person's physical or mental labor or skill," § 111 (definitions of "property" and "services").

Thus, it appears that any ideas, thoughts, programs, or concepts created by government officials and orally communicated to reporters or copied from documents for publication could be considered a theft.

And Section 1344 of S. 1 makes it a crime "to remove" a government record; neither intent to keep the document or to appropriate it for one's own use, as traditionally required, are elements of this crime. Unauthorized removal of a government record by an official or by a reporter for reading or copying could be a crime.

IV. FORCED DISCLOSURE OF NEWSMENS' SOURCES

The enactment of the National Secrecy Act provisions of S. 1 discussed above transforms much of present legitimate investigative reporting of defense and foreign affairs into criminal acts. By so doing, these provisions will not only permit the government to prosecute those who disseminate unfavorable defense information, but they will also provide the government, through the use of grand juries and wiretaps, with enormous leverage to ferret out and prosecute those who provide such information to newsmen. This power to eliminate the flow of unofficial information is a necessary part of an effective National Secrecy Act. And with it, the politically difficult prosecution of newsmen would not always be necessary in order to silence critics.

1. The use of grand juries to force disclosure of confidential news sources

Under S. 1, once classified information or national defense information which has not been officially released appears in the media, it is apparent that a crime has been committed; this information must have been either stolen or illegally communicated. The mere publication of the information is *prima facie* evidence of a felony.

If the published information is national defense information, the reporter has committed a crime by publishing it and not returning it to the government. Immunity can be granted to the reporter to find out who released the information. If the information is classified and not national defense information, the reporter will not have committed a crime, and no immunity need be granted to force disclosure of the source.

In either circumstance, the communication of the information to the reporter was a criminal act. The reporter must necessarily have been a witness to the felony, and he will probably be the only witness. Certainly, the reporter will be the only witness which the government can easily identify. The government can convene a grand jury, call before it the reporter who published the information, and demand he identify the source who is a felon. The reporter must divulge his source or go to jail for contempt.

Under the Supreme Court's decision in *Branzburg* v. *Hayes*, 408 U.S. 665 (1972), the newsman is provided no constitutional protection to keep the source of information confidential or to refuse to reveal its contents. In fact, in *Branzburg* the Court clearly stated that of all the possible situations which may warrant First Amendment protection for the confidentiality of newsmens' sources, the one instance which merited no protection whatsoever was when a reporter refused to identify a person who actually committed a crime. Justice White, writing for a majority of the Court, stated:

"Insofar as any reporter in these cases undertook not to reveal or testify about the crime he witnessed, his claim of privilege under the First Amendment presents no substantial question." (408 U.S. 665 at 692.)

This passage from *Branzburg* makes it almost impossible for any lower court to hold that a reporter's failure to divulge the source of his information is privileged from disclosure when such information conceals the identity of a felon under the National Secrecy Act.

Based upon *Branzburg*, the federal courts have already begun rendering decisions against reporters' claims made before grand juries of a privilege not to reveal news sources. *See, e.g., In re Lewis*, 501 F.2d 418 (9th Cir. 1974). Even in a civil libel action against a reporter, these claims of privilege have been rejected. *Carey* v. *Hume*, 402 F.2d 631 (D.C. Cir., 1974).

Without a federal newspaperman's shield law, the only protection a journalist has from forced disclosure of his sources before a federal grand jury are the Attorney General's guidelines which limit the use of reporters' compulsory testimony to certain situations. Yet these guidelines would clearly permit the forced disclosure of the sources of such information under the National Secrecy Act offenses.

In order to issue a subpoena requiring the presentation of evidence before a grand jury, these guidelines require that other evidence indicate that a serious crime was committed, that the information sought is essential to the prosecution, that it is not available from nonpress sources, and that the subpoena be limited in time and scope to the criminal action involved. *Hearings on S. 36, S. 158, S. 318, etc. Before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee* 93rd Cong., 1st Sess., p. 699. Under these criteria, a journalist would have no protection, and a federal prosecutor would have no barrier to seeking the identity of the reporter's source before a grand jury, and from seeking a citation for criminal contempt for non-cooperating newsmen.

Thus, under S. 1 federal prosecutors would not have to indict journalists to force their cooperation in silencing the sources for unfavorable defense information. And since the communication of national defense information, or the failure to return such information to the government, is a felony, a federal prosecutor would usually have the additional leverage over non-cooperating newsmen of a possible indictment; this coercion could be utilized within or outside the grand jury room.

Of course, this power to compel testimony from reporters exists today. But reporters are now rarely witnesses to felonies, and almost never the sole witness. By making part of investigative reporting a criminal act, journalists will necessarily become enmeshed in the government's prosecutorial efforts to silence unauthorized sources of defense information, even if the federal prosecutors choose, in their discretion, not to indict newsmen and their superiors.

3. *Blanket wiretaps and electronic surveillance of journalists*

S. 1 includes provisions for federal wiretapping and other types of electronic surveillance or "bugging", §§ 3101–09; § 1525(c). These permit the placing of wiretaps or "bugs" after an *ex parte* hearing before a judge, upon a showing by affidavit that there is probable cause that certain offenses have been committed. § 3101–02. They can be placed for a period of a month, and they can then be extended. § 3103(c). Interception of evidence of offenses other than that described in the probable cause affidavit can be utilized for prosecution if an *ex post facto* authorization to eavesdrop is obtained. § 3104(a).

This wiretap or electronic surveillance authority would become widely available to be used against journalists if the National Secrecy Act provisions of S. 1 were enacted. S. 1 makes the espionage and classified information offenses among those for which wiretapping can be used. § 3101(a)(3)(A). Once national defense information or classified information, which has not been officially released is published, there exists probable cause that an offense has occurred. A secret hearing would produce a wiretap or bug of the journalist involved to attempt to find the source of the information. Any "communication" which occurred during the wiretap of other national defense information or classified information would be a felony; the wiretap's or bug's irrefutable proof of its commission would be admissable as evidence in a prosecution.

With such authority, no journalist who ever printed defense information released without government sanction could ever be secure from secret government surveillance. And no source would ever openly discuss any sensitive matter with such a journalist, for these discussions could be subject to government surveillance.

As in the case of the grand jury's power to compel testimony, such wiretap and surveillance authority basically already exists, but probable cause that a reporter has committed a crime or is a witness to its commission is rare. And the mere publication of information now almost never constitutes evidence of probable cause of such a crime.

V. SUMMARY

The provisions of S. 1 discussed above constitute a sweeping and effective National Secrecy Act. In the area of national defense, defined in the most broad terms, only that information which the government chose to make public could be legally communicated. All other communication of defense related information, no matter what its source, regardless of the harm its disclosure would or would not cause, and irrespective of the motives of those who communicate it, is a crime.

This is a system of criminal laws designed to regulate the information which flows from the government, to regulate the press, and ultimately to regulate the free speech of the people. It covers not only harmful, intentional acts of espionage, but also any act of communication of which the government disapproves.

These criminal provisions provide the government with the means to incarcerate its critics in the press and in the government. They also provide the government the tools of the grand jury and of electronic surveillance to discover those who defy its sweeping power to control the debate over defense matters.

Enactment of the National Secrecy Act would be an unprecedented step towards centralized, unreviewable censorship in the United States. It would place in the hands of the Executive Branch the power to hide corruption, waste, mistake, and criminal acts in the area of national defense, and the power to silence its critics. In the area of defense matters, it would make the control and intimidation of the press and free speech both legal and routine.

SOLAR POWER ISSUE BRIEF

Mr. ABOUREZK. Mr. President, many of my constituents write to me asking for basic information about legislation affecting development of solar energy and about the various solar energy technologies. One document that has been very useful to me is the issue brief on this subject prepared by M. J. Glen Moore of the Library of Congress Science Policy Research Division. I call the attention of other Members of Congress to this document. I ask that it be printed in the RECORD following these comments.

There being no objection, the brief ordered to be printed in the RECORD, as follows:

SOLAR POWER ISSUE BRIEF NO. 1B74059

(By J. Glen Moore, Science Policy Research Division)

ISSUE DEFINITION

Solar energy is an essentially inexhaustible, pollution-free, and widely distributed energy source. However, it is a diffuse and intermittent source and its use will require large collector areas and, for most applications, the means for energy storage. There are six major research areas: heating and cooling of buildings, wind-energy conversion, bioconversion, ocean-thermal conversion, solar-thermal conversion, and photovoltaic conversion. Certain technologies are in limited use today, but it appears that high costs and other problems will keep solar from contributing materially to near-term energy needs. At what time and to what extent solar will make an impact on presently used energy sources over the long-term are key questions that cannot be reliably answered at this time.

BACKGROUND AND POLICY ANALYSIS

The Federal lead for solar energy research, development, and demonstration shifted from the National Science Foundation (NSF) to the Energy Research and Development Administration (ERDA) with the passage and implementation of the Energy Reorganization Act of 1974, P.L. 93–438. ERDA was activated Jan. 19, 1975 by a series of determination orders from the Office of Management and Budget. Pursuant to one order, $37 million in solar energy projects and funds and 47 solar and geothermal staff positions were transferred to ERDA from NSF. Dr. John M. Teem, formerly of the AEC, is acting deputy assistant administrator of ERDA for Solar Geothermal, and Advanced Energy Systems.

P.L. 93–438 provided for the transfer of all NSF functions related to solar heating and cooling. Additional solar authority was transferred to ERDA by the two solar energy Acts passed by the 93d Congress: P.L. 93–409, the Solar Heating and Cooling Demonstration Act of 1974, and P.L. 93–473, the Solar Energy Research, Development, and Demonstration Act of 1974.

Agencies conducting or supporting solar research or demonstration projects in FY 1975 included NSF, NASA, AEC, NBS, DOD, Postal Service, and EPA. Direct solar R&D may continue in these agencies (except for HUD, GSA, USDA, the Bureau of Mines, the the AEC, which was abolished by P.L. 93–438) in FY 1976 with close ERDA coordination. While NSF was lead agency for solar R&D, much of the coordination of Federal programs was accomplished through the Interagency Panel on the Terrestrial Applications of Solar Energy (IPTASE), which was composed of 15 different agencies and chaired by NSF, IPTASE, or a panel similar to IPTASE, is expected to be established by ERDA.

The pace of the Federal effort is reflected in the funding trend for terrestrial solar programs: $1.23 million in FY 1971; $1.68 million in FY 1972; $5.08 million in FY 1973; $17.28 million (estimated) in FY 1974; and $50 million (estimated) in FY 1975. The FY 1976 budget request (obligational authority) for solar research, development, and demonstration activities in all agencies showing direct solar R&D in their budgets totals about $75 million: $70.3 million in ERDA; $3 million in NSF; $1.2 million in USDA; and $0.3 million in NASA. An additional $3 million in obligational authority will be available to NSF in FY 1976 from funds deferred in FY 1976.

After hearings on the ERDA solar budget proposal, the Subcommittee on Energy Research, Development, and Demonstration of the House Committee on Science and Technology recommended to the full Committee that the ERDA FY 1976 budget authority be increased to $143.7 million, more than double the agency's request of $70.3 million. The following table shows the ERDA request and the Subcommittee recommendations (in millions) for the solar budget.

Fiscal year 1976 budget authority request

	ERDA	*Subcommittee*
Solar Research:		
Heating and cooling of buildings	$26.0	$40.4
Solar thermal energy conversion	13.2	28.5
Photovoltaics	12.8	29.5
Wind energy conversion	11.5	18.1
Bioconversion	3.6	6.5